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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-203937

DATE: January 19, 1982

MATTER OF: Dillon Supply Company; Department of
Energy--Request for Reconsideration

DIGEST:

1. Contracting agency's request for reconsideration of prior decision regarding timeliness of protest, filed with GAO more than 10 working days after the decision was issued and, presumably, received by the agency, is dismissed as untimely.
2. Protest that quotations were not evaluated on a common basis under solicitation which required a separate quote for a spare coupler assembly and stated that evaluation of final cost would include spare parts is sustained. Where the evaluation excluded the spare coupler price from the awardee's quotation, but included the protester's price for that item, award was on a basis different than stated in the solicitation and was improper. However, because the contract has been performed, corrective action is not possible.

Dillon Supply Company has protested the award of a contract to White Machinery Corporation for railroad car movers under request for quotations (RFQ) No. M-96446 issued by E.I. DuPont de Nemours & Company (DuPont), pursuant to its contract with the Department of Energy (DOE) to operate DOE's Savannah River Plant.

We previously held that the protest was timely filed with our Office following Dillon's debriefing by DOE and requested that DOE provide a report on the merits of the protest. Dillon Supply Company, B-203937, October 5, 1981, 81-2 CPD 276. In its report, DOE reiterated its position that the protest is untimely, essentially requesting that we reconsider our October 5 decision.

DOE's request for reconsideration is untimely and, therefore, is dismissed. Dillon's protest concerning the evaluation is sustained, but no corrective action is warranted.

Our Bid Protest Procedures, 4 C.F.R. § 21.9(b) (1981), require that requests for reconsideration by a party be filed within 10 working days after the basis for reconsideration is known or should have been known. Although the record does not indicate when DOE received our October 5 decision from which it should have known the basis for reconsideration, we have held that it is reasonable to assume that a protester will receive our decision within a week after its issuance. U.S. Financial Services, Inc.--Reconsideration, B-195945.5, B-198276.2, September 25, 1981, 81-2 CPD 249. The timeliness standards for filing a request for reconsideration are more inflexible than those for filing a protest. We see no reason, then, to apply a less stringent standard to an agency's request for reconsideration. See Central Intelligence Agency, National Office Systems, Inc.--Request for Reconsideration, B-201133.2, B-201133.3, June 22, 1981, 81-2 CPD 337. Because DOE's report, requesting reconsideration of our October 5 decision, was filed with our Office more than 3 calendar weeks (18 working days) after the decision was issued, it is clearly untimely and we decline to reconsider the timeliness of Dillon's protest. Department of Commerce; International Computaprint, 57 Comp. Gen. 615 (1978), 78-2 CPD 84; American Air Filter--DLA, Request for Reconsideration, id. 567 (1978), 78-1 CPD 443.

Dillon contends that Dupont did not evaluate the firms' quotations on a common basis, but excluded White's spare coupler price, resulting in award to White for the railcar movers at a higher price. In addition, the protester asserts that White's quotation does not comply with the RFQ requirement that the railcar movers be equipped with pneumatic road tires. Dillon also claims that White quoted on an F.O.B. origin basis, but was later permitted to change the quotation to F.O.B. destination and to absorb the additional freight charges.

DOE states that, as the RFQ expressly provided, DuPont intended to include the cost of the spare coupler in the evaluation in order to determine the maximum installed cost and that DuPont requested a separate

quote on the coupler in order to determine the lowest net cost. White quoted \$78,755 per railcar mover, but did not quote on the spare coupler because DuPont already had one. Dillon quoted \$77,992 per railcar mover and \$6,800 for the spare coupler, for an evaluated quotation price of \$240,776. White's evaluated price for three railcar movers was \$236,265. DOE insists that the evaluation method resulted in the lowest cost to DuPont. While the agency asserts that DuPont's position is consistent with the RFQ, DOE concedes that it would have been clearer if the RFQ stated that a spare coupler was required for any proposed equipment not compatible with already acquired White equipment.

DOE states that the equipment offered by both White and Dillon did meet DuPont's specifications. Contrary to Dillon's assertions, the railcar movers supplied by White do have pneumatic road tires, and White's quotation and descriptive literature clearly indicate that the movers are so equipped. DOE insists that White did quote on an F.O.B. destination basis and suggests that Dillon has confused these quotations with those the firms submitted in response to a September 9, 1980, RFQ issued for project planning purposes. The agency argues that Dillon has not established that DuPont erred in evaluating the quotations or that White's quotation did not meet the RFQ specifications, and concludes that the protest should be denied.

In our opinion, the RFQ was insufficient to permit the preparation and evaluation of quotations on a common basis known to the offerors. We agree that the RFQ should have advised offerors that DuPont already had a spare coupler and would not require an additional spare for compatible railcar movers. Absent this information, the RFQ failed to state DuPont's actual minimum needs regarding the coupler and to provide sufficient information from which an offeror could accurately estimate the effect of a spare coupler price on its quotation in relation to other possible quotations. See 36 Comp. Gen. 380, 385 (1956). Failure to provide this information resulted in offerors quoting on different bases.

The RFQ expressly requires a separate spare coupler quote and states that evaluation of final cost will be based, among other things, on spare parts. It does not provide, however, that the spare coupler price would be included in evaluating some quotations and excluded from

others. Consequently, the RFQ also failed to advise offerors of the actual manner in which their spare coupler prices and overall quotations would be evaluated.

We have held that offerors cannot compete on an equal basis unless they know in advance the basis on which their quotations will be evaluated, and that if a solicitation's evaluation provisions do not adequately reflect the agency's actual needs, it is defective. North American Reporting, Inc., Ace-Federal Reporters, Inc., 60 Comp. Gen. 64 (1980), 80-2 CPD 364. Although a contracting agency has broad discretion in determining the evaluation plan it will use, it does not have the discretion to announce one plan in the solicitation and then follow another plan in the actual evaluation. The agency must either follow the evaluation criteria specified, or advise all offerors of any significant changes in the evaluation scheme. Dynallectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70. DuPont's evaluation resulted in award of a contract to White on a basis other than the one on which quotations were solicited. The award was, therefore, improper and prejudicial to Dillon and the protest on this issue is sustained. Lawrence Johnson & Associates, Inc., B-196442, March 11, 1980, 80-1 CPD 188.

However, Dillon's other contentions are without merit. White's quotation and descriptive literature do show that the railcar movers are equipped with pneumatic road tires, White took no exception to the requirement in its quotation, and DuPont confirmed upon delivery that the railcar movers were so equipped. Although White initially quoted an F.O.B. shipping point, the quotation was revised to an F.O.B. destination basis by letter to DuPont dated March 16, 1981, and received on March 20, 1981, which constitutes a timely modification to White's quotation before the March 24 closing date for receipt of quotations. These grounds of Dillon's protest are denied.

In determining whether it is in the Government's best interest to recommend action which may result in the termination of an improper award, we consider factors such as the seriousness of the procurement deficiency, the degree of prejudice to other offerors or to the integrity of the competitive procurement system, the

extent of performance and the cost to the Government. Datapoint Corporation, B-186979, May 18, 1977, 77-1 CPD 348. Since White has completed performance of the contract and DuPont has confirmed that the equipment meets its specifications, it is not possible to recommend remedial action. Unidynamics/St. Louis, Inc., B-181130, August 19, 1974, 74-2 CPD 107. However, by separate letter of today we are advising the Secretary of DOE of the deficiency in this procurement.

The protest is sustained in part and denied in part.



Acting Comptroller General
of the United States